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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054050
Party	Defendant Unimundo Corp dba Unimundotv
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Submission	Motion for Default Judgment
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Date	02/05/2014
Attachments	Unimundo's Motion for Default Judgment for Failure to Conduct D.pdf(4116417 bytes)

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Registrant Unimundo Corporation by and through
Marcus Fontain, President and CEO, in pro se

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNIMUNDO CORPORATION,)	Cancellation No. 92054050
a Florida Corporation,)	Registration No. 3,889,485
)	Serial No. 85-003,668
vs.)	
)	
UNIVISION COMMUNICATIONS, INC., a)	MOTION FOR DEFAULT JUDGMENT
California Corporation,)	PURSUANT TO 37 C.F.R. 2.120(g)
)	
Petitioner.)	
)	
)	
)	

COMES NOW, Registrant Unimundo Corporation ("Unimundo"), pursuant to 37 C.F.R. 2.120(g), hereby moves for default judgment against Petitioner Univision Communications, Inc., ("Univision") for failure to respond to an order of the Board compelling discovery.

In Support of this Motion, Unimundo sets forth the following:

I

BACKGROUND

1. On January 31, 2013 the Board ordered Univision to conduct Discovery. To this date Univision has not conducted the discovery and did fail to conduct discovery as ordered.

The Discovery schedule was ordered to be completed as follows:

Deadline for Discovery Conference **3/1/2013**
Discovery Opens **3/1/2013**
Initial Disclosures Due **3/31/2013**
Expert Disclosures Due **7/29/2013**
Discovery Closes **8/28/2013**
Plaintiff's Pretrial Disclosures **10/12/2013**
Plaintiff's 30-day Trial Period Ends **11/26/2013**
Defendant's Pretrial Disclosures **12/11/2013**
Defendant's 30-day Trial Period Ends **1/25/2014**
Plaintiff's Rebuttal Disclosures **2/9/2014**

See Exhibit 1.

II

ARGUMENT

2. If a party fails to comply with an order of the Board, "the board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the federal Rules of Civil Procedure[.]" 37 C.F.R. Section 2.120(g)(1). One such order, particularly appropriate for the failure to obey a discovery order is rendering of default judgment against the disobedient party. Fed.R.Civ.P. Rule 37(b)(2)(A)(vi).

3. While the entry of default judgment is a harsh remedy, such remedy is appropriate in situations like this where the party has ignored for more than one year the discovery order of the Board compelling such discovery. See, e.g., *MHV Ltd. V. Simex, Aussenhandelsgesellschaft Salvetsberg KG*, 59 USPQ. 2d 1477 (TTAB 2000).

4. In fact, the present situation is not unlike *MHW Ltd.*, where one party failed to respond to the other party's request for discovery and disregarded the Board's order to compel. *Id.*, at 1477. In response, the Board granted a Motion for Default Judgment and dismissed the opposition with prejudice. *Id.*, at 1479.

5. Because Univision has blatantly disregarded the Order of the Board for nearly one year and caused an unnecessary protracted proceeding, any prejudice that Univision may experience from a default judgment been entered is self-inflicted and more than warranted.

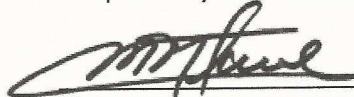
III

PRAYER FOR RELIEF

6. WHEREFORE, Unimundo Corporation prays that the Board issue an order entering a default judgment against Univision Communications, Inc., dismissing the Cancellation Petition.

Executed on February 05, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Fontain', is written over a horizontal line.

Unimundo Corporation
By and through
Marcus Fontain, J.D.
President and CEO, in pro se

Exhibit 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN

Mailed: January 31, 2013

Cancellation No. 92054050

Univision Communications Inc.

v.

Unimundo Corp.

By the Trademark Trial and Appeal Board:

This case comes up on the motion of respondent Unimundo Corp., acting pro se, to dismiss the amended petition to cancel pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The motion is contested.

On March 16, 2012, the Board issued an order finding that the original petition to cancel was legally sufficient inasmuch as petitioner pleaded standing, and claims of priority of use and likelihood of confusion, and dilution, but granting the motion to dismiss as to the legally deficient fraud claim. On March 26, 2012, petitioner filed an amended petition to cancel, and on June 14, 2012, respondent filed a motion to dismiss the amended petition.

MOTION TO DISMISS IS DENIED

As set forth in the last order, to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The pleading is sufficient if it alleges plausible facts as would, if proved, establish that plaintiff is entitled to the relief sought, that is, that 1) plaintiff has standing to maintain the proceeding, and 2) a valid ground exists for denying or cancelling the registration. See *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1755 (Fed. Cir. 1998). The amended petition to cancel remains the same with respect to the pleading of petitioner's standing and claims of priority of use and likelihood of confusion, and dilution.

With respect to the fraud claim, the amended petition to cancel corrects the deficiencies in the prior petition inasmuch as petitioner no longer relies on allegations made "on information and belief," but alleges that petitioner investigated respondent's use using internet engines, internet archives, respondent's website, and respondent's publications. The amended petition also alleges that, upon the results of petitioner's investigation, as well as upon information and belief, respondent's statements to the USPTO regarding its use

of the mark on all the listed services knowingly pleads a known misrepresentation, on a material matter, made to procure a registration. The amended fraud claim thus meets the particularity requirements for pleading fraud, including the requirement for generally pleading intent. *Daimlerchrysler Corporation and Chrysler, LLC v. American Motors Corporation*, 94 USPQ2D 1086, 1089 (TTAB 2010).

Respondent's motion to dismiss is denied, and the amended petition to cancel is accepted as the operative pleading in this proceeding. The Board notes that respondent filed an answer denying the salient allegations of the petition to cancel on April 13, 2012.

RESPONDENT ADVISED OF POTENTIAL SANCTION

In the last order the Board noted "We reject respondent's argument that the petition improperly asserts (§10) third party rights in the likelihood of confusion claim" and assured respondent "the Board will address likelihood of confusion only with respect to registrant's UNIMUNDO and petitioner's pleaded UNIVISION and U marks." Notwithstanding the Board's order, respondent's motion to dismiss moves to strike "any reference to TELEMUNDO", and reiterates at great length its objection to petitioner's argument that respondent's mark improperly combines petitioner's mark UNIVISION with the third party mark TELEMUNDO.

Inasmuch as this has already been addressed, the Board denies respondent's motion to strike.

If a party disagrees with a Board decision on a motion, the party must file a request for reconsideration within thirty days of the order. See Trademark Rule 2.127(b). Respondent did not seek reconsideration here. Accordingly, the Board's decision, that the references in the petition to cancel to TELEMUNDO are relevant to the pleaded issue of likelihood of confusion, will not be revisited.

Respondent was also ordered (Board order of March 16, 2012, p. 2 fn 1) to file just a single copy of any paper. In response to the amended petition to cancel, respondent filed a 9 page motion to dismiss on April 13, 2012; a 7 page supplemental memorandum in support of the motion to dismiss on April 14, 2012, a reply brief on May 15, 2012, and an amended reply brief on May 17, 2012. Titling a paper as "amended" is not sufficient to comply with the Board's order, which is intended to avoid a waste of the Board's time in reviewing repetitive papers.

In addition, respondent raised new matter in its reply brief, which is not permissible. Reply briefs are limited to addressing matters raised in the opposition to the motion.

Ignoring Board orders and renewing failed arguments will not be tolerated. If respondent unnecessarily enlarges the record with duplicative filings - even those titled "amended" -

or raises arguments about the sufficiency of the pleading which the Board has already addressed, respondent will be barred from filing ANY papers without the Board's express permission.

Dates are reset below:

Deadline for Discovery Conference	3/1/2013
Discovery Opens	3/1/2013
Initial Disclosures Due	3/31/2013
Expert Disclosures Due	7/29/2013
Discovery Closes	8/28/2013
Plaintiff's Pretrial Disclosures	10/12/2013
Plaintiff's 30-day Trial Period	11/26/2013
Ends	
Defendant's Pretrial Disclosures	12/11/2013
Defendant's 30-day Trial Period	1/25/2014
Ends	
Plaintiff's Rebuttal Disclosures	2/9/2014
Plaintiff's 15-day Rebuttal Period	3/11/2014
Ends	

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

PROOF OF SERVICE

I Marcus Fontain, on this date have delivered via U.S. mail a copy of this MOTION FOR DEFAULT JUDGMENT PURSUANT TO 37 C.F.R. 2.120(g), addressed to:

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Univision Communications Inc.

February 05, 2014



Marcus Fontain, J.D.